

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

KEVIN V. BYNG,

Plaintiff,

v.

No. 9:07-CV-471
(GLS/DRH)

JAMES L. CAMPBELL, et al.,

Defendants.

APPEARANCES:

OF COUNSEL:

KEVIN V. BYNG
Plaintiff pro se
07-A-3241
Fishkill Correctional Facility
Post Office Box 1245
Beacon, New York 12508

ROBERT P. ROCHE, ESQ.
Counsel for Defendants Sheriff James Campbell,
Albany County Sheriff's Department, D. Delong
and M. Rose
36 South Pearl Street
Albany, New York 12207

THUILLEZ, FORD, GOLD, BUTLER
& YOUNG, LLP
Counsel for Defendants Correctional Medical Services, Inc.,
Gloria Cooper, Jill Harrington, Dr. Salzman and Dr. Robnowitz
20 Corporate Woods Boulevard, 3rd Floor
Albany, New York 12211

WILLIAM C. FIRTH, ESQ.

REPORT-RECOMMENDATION

In a letter dated February 9, 2009, plaintiff moved to dismiss the above-captioned action without prejudice. Docket No. 132. Defendants filed responses opposing any dismissal that is without prejudice. Docket Nos. 138, 139. Under Fed. R. Civ. P. 41(a)(1)(a)(ii), where as here, the opposing parties have answered, a plaintiff may dismiss an action without leave of

court only upon the stipulation of the defendants. The defendants here have refused such a stipulation unless the dismissal is with prejudice. Accordingly, it is hereby

RECOMMENDED that plaintiff's motion to dismiss this action without prejudice (Docket No. 132) be **DENIED**; and it is further

ORDERED that the Clerk serve a copy of this Order on the plaintiff by regular mail.


Pursuant to 28 U.S.C. § 636(b)(1), the parties have ten days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court.

FAILURE TO OBJECT TO THIS REPORT WITHIN TEN DAYS WILL PRECLUDE

APPELLATE REVIEW. Roldan v. Racette, 984 F.2d 85 (2d Cir. 1993) (citing Small v. Secretary of HHS, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

IT IS SO ORDERED.

Dated: March 4, 2009
Albany, New York


United States Magistrate Judge